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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/527,640

03/14/2005

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F7660(V)

9535

201 7590 05/22/2009
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EXAMINER

PRATT, HELEN F

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

05/22/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/527,640	Applicant(s) APPELQVIST ET AL.	
	Examiner Helen F. Pratt	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7 and 10-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7, 10-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

**THE ALLOWANCE OF THE CLAIMS HAS BEEN REMOVED IN FAVOR OF THE
FOLLOWING OFFICE ACTION.**

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 7, 10, 11 are rejected under 35 U.S.C. 102b as being anticipated by Allain et al. (2,118,391).

Allain et al. disclose a composition as in claim 7 made by a process of cooking bananas (thereby deactivating the PME) and combining the cooked bananas with raw bananas in a ratio of 3:1. Other ingredients such as sugar and flour are added and the ingredients are mixed together. The mixture is then heated in a thin sheet until it is dry. The dried sheet is then reduced to small flakes similar to dry breakfast cereal flakes (col. 2, lines 5-45, col. 1, lines 30-34). The composition would have thickening characteristics since the claimed ingredients and process have been disclosed above.

The banana mixture is seen to be incorporated into a product as wheat flour and sugar are added to the mixture. As it is not known what acidity is required, adding more of a bland mixture would have reduced the perceived acidity of the product as in claim 10.

A product containing 90% of the bananas mixture is disclosed on page 1, col. 2, lines 13-19 as in claim 11.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allain et al. as applied to claims 7, 10 and 11 above, and further in view of Belmar et al. (WO 99/65328).

Belmar et al. disclose incorporating the homogenized vegetable puree in a food product in amounts from 20-45% as in claim 10 (page 14, claim 7). Certainly incorporating a less acid product would reduce the acidity of any mixture. Therefore, it

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would have been obvious to use the composition of Allain which is made by the claimed method in the method of Belmar et al. for its known function of being able to reduce acidity in a product.

Claim 11 further requires a product containing from 0.5% to 95% of the thickening agent and claim 12 that the product containing salt, and claim 13 that the product is a food product.

Belmar et al. disclose as in claim 11 that it is known to make a thickening agent from homogenized vegetable puree, and to add it to other foodstuffs in an amount from 5-80%, and the product can be a mayonnaise or dressing. Dressings are considered to be oil and water mixtures as in salad dressings, as is mayonnaise (abstract and (page 7, lines 5-20). Claim 11 differs from the reference in that the thickening agent is the product of claim 7. However, claim 7 is a product by process claim. The fact that the procedures of the reference are different than that of applicant is not a sufficient reason for allowing the product-by-process claims since the patentability of such claims is based upon the product formed and not the method by which it was produced. See *In re Thorpe* 227 USPQ 964. The burden is upon applicant to submit objective evidence to support their position as to the product-by-process claims. See *Ex parte Jungfer* 18 USPQ 2D 1796. Belmar discloses a thickening agent made of fruit containing PME enzyme. Even though the product is not dry, Allain et al. disclose drying a PME containing fruit as above. The reference to Allain differs from Belmar in the degree of PME inactivation of the product, thereby controlling the thickening power of the product. Belmar does this by using fruits with less starch. However, the outcome is the same of

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fruits or vegetables containing a controlled amount of thickening power. Therefore, it would have been obvious to dry a fruit thickener as disclosed by Allain to make the product of Belmar, and to use the product of Allain et al. to add to other foods mixtures, which would also increase the viscosity of those mixtures.

The addition of salt as in claim 12 is well known, and it would have been obvious to add salt at any time or amount for its known flavoring and preservation functions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Keith Hendricks, can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Helen F. Pratt/
Primary Examiner, Art Unit 1794
5-19-09

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